



Colorado Department
of Public Health
and Environment



NW-114
067

FEB 02 2006

06-DOE-00016

Dear Community Member:

As you may be aware, the Colorado Department of Public Health and Environment (CDPHE) recently released the *Final Draft Landfill Monitoring and Maintenance Plan and Post-Closure Plan (Plan)* for the Rocky Flats Environmental Technology Site Present Landfill for a thirty-day public comment period. For information purposes, and to aid in the public's review of the *Plan*, CDPHE, the U.S. Department of Energy (DOE) and the U.S. Environmental Protection Agency (EPA) are also releasing recent minor modifications to supporting regulatory documents, and a draft of an environmental covenant.

To this end, the following documents and modifications to existing documents are enclosed:

- 1) A draft environmental covenant for the Present Landfill - - The DOE has informed CDPHE that it intends to grant an environmental covenant for the Present Landfill, pursuant to section 25-15-321, Colorado Revised Statutes. Among other things, the draft covenant contains the use restrictions for the Present Landfill. While this draft covenant applies only to the Present Landfill and associated facilities, CDPHE and DOE anticipate formulating a more comprehensive environmental covenant for the lands that will ultimately be retained by DOE, concurrent with the Rocky Flats Record of Decision, expected late this year.
- 2) Proposed modifications to the Interim Measure/Interim Remedial Action (IM/IRA) document for the Present Landfill - - The enclosed IM/IRA modifications address two general issues. First, changes have been made to clearly incorporate post-closure requirements into the IM/IRA. Second, technical aspects of the IM/IRA (especially as related to environmental monitoring requirements and wetland management) have been modified to ensure that the *Plan* and the IM/IRA are consistent with one another.
- 3) Proposed modifications to the Rocky Flats Cleanup Agreement (RFCA) - - The enclosed RFCA modifications are intended to clarify that post-closure activities are within the scope of RFCA.

Note that only the changed pages of the IM/IRA and RFCA are enclosed. Complete, unmodified versions of each document are available on line at www.rfets.gov; the IM/IRA may be accessed via the Administrative Record tab.

ADMIN RECORD

BZ-A-000918

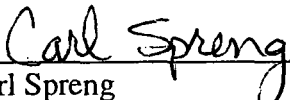
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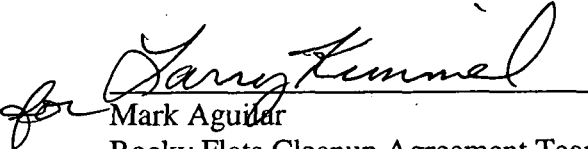
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These documents are being released for public information rather than formal public comment, as the changes to the IM/IRA and RFCA are considered to be minor modifications, and there is not a public comment period required for the draft environmental covenant. We will, however, consider any comments received on these documents prior to March 3, 2006, although we will not prepare a responsiveness summary.

Questions or comments on these documents may be directed to Carl Spreng of CDPHE at (303) 692-3358, Mark Aguilar of EPA at (303) 312-6251, or John Rampe of DOE at (303) 966-6246.

Sincerely,

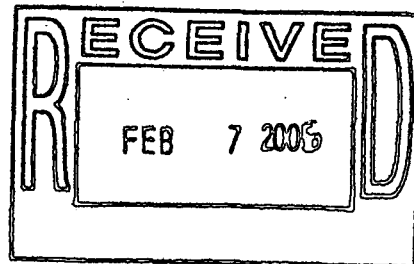

Carl Spreng
Rocky Flats Cleanup Agreement Project Coordinator
Colorado Department of Public Health and Environment


Mark Aguilar
Rocky Flats Cleanup Agreement Team Lead
U.S. Environmental Protection Agency, Region VIII


John J. Rampe
Director, Rocky Flats Closure Project Management
U.S. Department of Energy

Enclosures:
As stated

cc w/Encl.:
K. Korkia, RFCAB
D. Abelson, RFCLOG
S. Garcia, City of Broomfield
A. Nelson, City of Westminster
M. Sattelberg, USFWS
F. Lockhart, DOE-EM
S. Surovchak, DOE-LM
R. Darr, S.M. Stoller, RFPO
J. Walstrom, CH2M Hill
Administrative Record



This property is subject to an Environmental Covenant held by the Colorado Department of Public Health and Environment pursuant to section 25-15-321, C.R.S.

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into this ____ day of ____, 2006, by the United States of America, acting through the United States Department of Energy ("DOE"), and the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department"), pursuant to § 25-15-320 of the Colorado Hazardous Waste Act, § 25-15-101, C.R.S. ("CHWA"). The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, the United States owns, and DOE has administrative jurisdiction over, certain property commonly referred to as the Rocky Flats Environmental Technology Site ("RFETS") or Rocky Flats, located at 10808 Highway 93, Golden, Colorado, more particularly described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth; and

WHEREAS, there exists on Rocky Flats a hazardous waste landfill commonly known as the Present Landfill. The Present Landfill, together with certain adjoining lands and engineered structures, is hereinafter referred to as "the Property", and is situated as shown in Attachment A; and

WHEREAS, pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. ("RCRA"), and CHWA, Rocky Flats is subject to closure, post-closure and corrective action requirements; and

WHEREAS, pursuant to the Rocky Flats Cleanup Agreement (Federal Facility Agreement and Consent Order, CERCLA VIII-96-21, RCRA (3008(h)) VIII-96-01, State of Colorado Docket #96-07-19-01, as amended) ("RFCA"), the Property is the subject of enforcement and remedial action pursuant to CHWA and RCRA, and the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); and

WHEREAS, the Present Landfill was used for the disposal of asbestos-containing waste material; and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by preventing intrusion into the Present Landfill or damage to the various engineered structures on the Property, and preventing exposure to hazardous wastes. A description of the remedy for the Present Landfill can be found in the "Final Interim

Measure/Interim Remedial Action for IHSS 114 and RCRA Closure of the RFETS Present Landfill" dated August 2004 (as amended XX, 2006), which may be found in the CERCLA Administrative Record for RFETS; and

WHEREAS, DOE has placed in the administrative record required under 42 U.S.C. § 9613(k) for the Rocky Flats Site, and filed with the Department and the Jefferson County Planning and Zoning Department a survey plat and record of the wastes that have been disposed in the Present Landfill, as required by 6 CCR 1007-3 § 265.119(b)(1)(iii); and

WHEREAS, the United States, acting by and through the DOE, is prepared to subject the Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes, which covenants and restrictions shall burden the Property and bind DOE and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land, as described herein, for the benefit of the Department.

NOW, THEREFORE, the United States, acting by and through the DOE pursuant to its authority under the Atomic Energy Act, 42 U.S.C. § 2011, et. seq., and CERCLA, hereby grants this Covenant to the Department, and declares that the Property as described in Attachment A shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1 through 11, below, which shall run with the Property in perpetuity and be binding on DOE and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land, as described herein. As used in this Covenant, the term OWNER means the current owner of the Property, as the term owner is defined in § 25-15-101(12.5), C.R.S.

1) Use restrictions

- a) Activities that may damage or impair the proper functioning of the Present Landfill cap and runoff controls, the passive seep intercept and treatment system, the groundwater monitoring wells or the surveyed benchmarks are prohibited. The Present Landfill cap and runoff controls, the passive seep intercept and treatment system, the groundwater monitoring wells, and the surveyed benchmarks are depicted on Attachment A.
- b) Digging, drilling, tilling, grading, excavation, construction of any sort (including construction of any structures, paths, trails or roads), and vehicular traffic are prohibited on the Property.
- c) Drilling for or pumping groundwater is prohibited on the Property.
- d) The restrictions in (a) – (c) above do not apply to response actions authorized pursuant to the RFCA, including monitoring and maintenance activities.

- 2) Modifications and Termination This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. OWNER may request that the Department approve a modification or termination of the Covenant. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information, and may request additional information. If the Department determines that the proposal to modify or terminate the Covenant will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Covenant shall be effective unless the Department has approved such modification or termination in writing. Any approved modification or termination shall be recorded as required in § 25-15-321(3). Information to support a request for modification or termination may include one or more of the following:
- a) a proposal to perform additional remedial work;
 - b) new information regarding the risks posed by the residual contamination;
 - c) information demonstrating that residual contamination has diminished;
 - d) information demonstrating that an engineered feature or structure is no longer necessary;
 - e) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
 - f) other appropriate supporting information.
- 3) Conveyances OWNER shall notify the Department at least fifteen (15) days in advance of any proposed grant, transfer or conveyance of any interest in any or all of the Property.
- 4) Notice to Lessees OWNER agrees to incorporate either in full or by reference the restrictions of this Covenant in any leases, licenses, or other instruments granting a right to use the Property.
- 5) Notification for proposed construction and land use OWNER shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.
- 6) Inspections The Department shall have the right of entry to the Property at reasonable times with prior notice for the purpose of determining compliance with the terms of this Covenant. Nothing in this Covenant shall impair any other authority the Department may otherwise have to enter and inspect the Property.
- 7) No Liability The Department does not acquire any liability under State law by virtue of accepting this Covenant.
- 8) Enforcement This Covenant may be enforced as provided in § 25-15-322, C.R.S., consistent with state and federal laws.

- Hazardous Waste Corrective Action Unit Leader
Hazardous Materials and Waste Management Leader
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

DOE

Title:_____

_____, _____ by _____ on behalf of DOE

Address

_____;

Title: _____

) **SS:**

_____, _____ by _____ on behalf of the Colorado Department
of Public Health and Environment.

Notary Public

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[illegible]

FINAL ROCKY FLATS CLEANUP AGREEMENT

- n. Describe the roles and responsibilities of the Parties.
- o. Coordinate all of DOE's cleanup obligations under CERCLA, RCRA, and CHWA in a single agreement to streamline compliance with these three statutes.
- p. Establish a process for identifying the applicable or relevant and appropriate legal requirements for response action(s) regulated under CERCLA.
- q. Provide for continued operation and maintenance of the selected remedial/corrective action(s) as appropriate.
- r. Establish a procedural framework and schedule such that the remedial investigation and response actions selected and implemented by the Parties are sufficient to meet the criteria and procedures for the Site's timely removal and delisting from the NPL.

PART 4 STATUTORY COMPLIANCE/RCRA-CERCLA COORDINATION

11. The Parties intend to use this Agreement to coordinate DOE's CERCLA response obligations, CHWA closure and post-closure obligations for hazardous waste management units identified in this Agreement, and CHWA and RCRA corrective action obligations. Therefore, the Parties intend that compliance with the requirements of this Agreement will be deemed to achieve compliance with:

- a. CERCLA, 42 U.S.C. § 9601 et seq., and specifically that the cleanup at the Site will satisfy all applicable or relevant and appropriate federal and State laws and regulations, to the extent required by section 121 of CERCLA, 42 U.S.C. § 9621;
- b. the corrective action requirements of sections 3004(u) and (v) of RCRA, 42 U.S.C. § 6924(u) and (v), for a RCRA permit, and section 3008(h), 42 U.S.C. § 6928(h), for interim status facilities;
- c. the corrective action requirements of CHWA, including 6 CCR 1007-3 sections 264.101 and 265.5; and
- d. the closure requirements of CHWA for those hazardous waste management units identified in Attachment 3, and any post-closure requirements applicable to such units.

12. The Parties also intend to coordinate the remedial activities that are regulated under this Agreement with requirements of the Federal Facility Compliance Act to develop a plan or agreement for treatment of mixed waste generated by actions required under this Agreement. This coordination will occur as follows:

- a. For mixed wastes generated under this Agreement that will not be treated by the mixed waste treatment capacity developed to treat non-remedial wastes in accordance with the then applicable Site Treatment Plan and Order enforced by CDPHE, the state portion of the relevant decision document shall constitute the order required under 42 U.S.C. § 6939c(b)(5).

FINAL ROCKY FLATS CLEANUP AGREEMENT

- b. For mixed wastes generated under this Agreement that will be treated by the mixed waste treatment capacity developed to treat non-remedial wastes in accordance with the then applicable Site Treatment Plan and Order enforced by CDPHE, compliance with 42 U.S.C. § 6939c(b)(5) shall be regulated under the then applicable Site Treatment Plan and Order enforced by CDPHE, and shall not be enforced under this Agreement.

13. The Parties recognize that:

- a. DOE is obligated to comply with applicable requirements of RCRA, CHWA, CERCLA, and State environmental law for all remedial activities under this Agreement;
- b. the coordination of these statutory requirements under this Agreement in no way diminishes DOE's obligations;
- c. the inclusion of these statutory requirements in a single document serves to facilitate DOE's efficient compliance with these statutory requirements; and
- d. the Agreement is a single document that has dual purposes of serving as both a CERCLA § 120 Interagency Agreement and a CHWA corrective action order; the requirements of both are enforceable by the Parties.

14. The Parties intend that any final response action selected, implemented, and completed under this Agreement shall be deemed by the Parties to be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further action outside the scope of this Agreement to protect human health or the environment for those same releases. While the Parties intend to minimize any residual injury to natural resources, completion of work pursuant to this Agreement does not bar a claim by the State for natural resource damages.

15. ~~DOE is subject to a CHWA permit that contains provisions governing corrective action for releases of hazardous wastes or constituents at the Site. These corrective action provisions were drawn from the Statement of Work element of the 1991 Interagency Agreement. The Parties recognize the continuing need to ensure consistency between the corrective action requirements of the permit and the requirements of this Agreement, and agree to take such actions as are necessary to accomplish this goal. Therefore, the Parties agree that when this Agreement becomes effective, CDPHE shall issue a permit modification to remove the "Statement of Work" references from Part 15 of the CHWA permit and the Attachments section of the CHWA Permit, and to incorporate the following language as the corrective action requirement of the CHWA permit:~~

~~There have been releases of hazardous wastes and constituents from solid waste management units into the environment at Rocky Flats. Accelerated corrective and remedial actions to address these releases are being regulated by the Department [CDPHE] and EPA under the Rocky Flats Cleanup Agreement, Compliance Order on Consent No. 96-XX-XX-01 ("RFC"). Following implementation of these accelerated corrective and remedial actions, the Department [CDPHE] will be making a final corrective action decision for each OU. The final corrective action decisions will be incorporated as modifications to this permit. If the~~

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~~RFCA is terminated before all corrective action has been taken, this permit shall be modified to incorporate requirements of the RFCA that are requirements of CHWA.~~

16. The Parties recognize that under section 121(e)(1) of CERCLA, portions of the response actions required by this Agreement and conducted entirely on the Site are exempted from the procedural requirement to obtain federal, state, or local permits, when such response action is selected and carried out in compliance with section 121 of CERCLA. It is the understanding of the Parties that the statutory language is intended to avoid delay of on-Site response actions, due to procedural requirements of the permit process. The Parties agree that the following activities are being approved, at least in part, pursuant to CERCLA authorities:

- a. removal or remedial actions in the Buffer Zone (except as provided below with respect to a retrievable, monitored storage or disposal facility);
- b. decommissioning activities;
- c. activities required under any concurrence CAD/ROD; and
- d. remedial actions in the Industrial Area for hazardous substances that are not also hazardous wastes or hazardous constituents (e.g., radionuclides that are not mixed wastes and PCBs).

Therefore, no permits are required for the activities described in (a)-(d) above. Subject to paragraph 098, DOE agrees to seek and implement any federal, state or local permits, including RCRA or CHWA permits, for operations or processes required to implement activities regulated under this Agreement, other than those listed in (a)-(d) above. Notwithstanding subparagraph (a) above, an action to construct and operate a retrievable, monitored storage or disposal facility as described in paragraph 080 in the Buffer Zone will be submitted for review and approval pursuant to State authorities under this Agreement, and such action must obtain all applicable permits as provided in this Agreement. Notwithstanding subparagraph (c) above, this Agreement does not constitute an admission by any Party as to whether permits would be required if EPA and CDPHE do not issue concurrence CAD/RODs. In such a case, the provisions of Parts 15 (Dispute Resolution) and 18 (Reservation of Rights) may be applied.

17. When DOE proposes a response action regulated under CERCLA that, in the absence of CERCLA section 121(e)(1) and the NCP, would require a federal or State permit, DOE shall include in the submittal:

- a. Identification of each permit which would otherwise be required.
- b. Identification of the standards, requirements, criteria, or limitations which would have had to have been met to obtain each such permit.
- c. Explanation of how the response action proposed will meet the standards, requirements, criteria, or limitations identified in subparagraph 047b immediately above.

18. Upon the request of DOE, EPA and CDPHE will provide their positions with respect to paragraphs 047b and 047c above in a timely manner.

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- 1 results in closure in-place versus removal) that fundamentally alters the pre-approved
2 procedure.
- 3
- 4 ss. Minor modification means a modification that achieves a substantially equivalent level of
5 protection of workers and the environment and does not constitute a significant departure from
6 the approved decision document or the basis by which a decision was previously made or
7 approved, but may alter techniques or procedures by which the work is completed, e.g., a
8 change in an RSOP that does not change the final result of the activity (e.g., alteration to a
9 tank closure procedure that still results in a clean closure), or a change in operation or capacity
10 of a treatment system that does not cause the system to exceed an effluent limit.
- 11
- 12 tt. Mixed Waste or Radioactive Mixed Waste means waste that contains both hazardous waste
13 and radioactive materials classified as source, special nuclear, or by-product material subject
14 to the AEA of 1954 (42 U.S.C. § 2011 et seq.)
- 15
- 16 uu. Natural Resource Trustee means a federal or State official who acts as a trustee on behalf of
17 the public to oversee natural resources, and to recover Natural Resource Damages as
18 appropriate. With respect to the Site, the following officials have been designated as Natural
19 Resource Trustees:
- 20
- 21 -- Secretary of Energy (DOE)
22 -- Secretary of Interior (DOI)
23 -- Executive Director of the Colorado Department of Public Health and Environment
24 (CDPHE)
25 -- Colorado Attorney General (AG)
26 -- Deputy Director of the Colorado Department of Natural Resources (CDNR)
- 27
- 28 vv. No Action/No Further Action or NA/NFA means the determination that remedial actions (or
29 further remedial actions) are not presently warranted; however, NA/NFA decisions are subject
30 to revisitation at the time of the CAD/ROD in accordance with Attachment 6, and are also
31 subject to paragraph 0238 (Reservation of Rights) and to the CERCLA § 121(c) mandate for a
32 five-year review of remedial actions that result in hazardous substances, pollutants, or
33 contaminants remaining at the Site.
- 34
- 35 ww. Operable Unit (OU) means a grouping of IHSSs into a single management unit.
- 36
- 37 ww.a. Post-closure means regulatory requirements under RCRA and CHWA for regulated
38 hazardous waste management units that do not meet the standards for clean closure. Post-
39 closure requirements are found in 6 CCR 1007, § 264.117 through 264.120, or 265.117
40 through 265.121, as appropriate.
- 41
- 42 xx. Proposed Action Memorandum or PAM means the decision document that describes an
43 accelerated cleanup activity which DOE expects can be completed during a six-month period.
- 44

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- yy. RCRA means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et. seq., as amended by the Hazardous and Solid Waste Amendments of 1984, the Federal Facility Compliance Act of 1992, and implementing regulations.
- zz. RCRA Facilities Investigation (RFI) means the RCRA/CHWA term for an investigation conducted by the owner/operator of a facility to gather data sufficient to characterize the nature, extent, and rate of migration of contamination from releases identified at the facility. The RFI and the CERCLA RI are analogous documents, and may be the same document.
- aaa. Record of Decision (ROD) means the CERCLA decision by DOE and EPA, or by EPA alone in the event EPA disagrees with a remedy proposed by DOE, selecting the remedial action or actions to remedy environmental and human health concerns at the Site.
- bbb. Regulated Unit means a surface impoundment, waste pile, and land treatment unit or landfill that receives hazardous waste after July 26, 1982 (6 CCR 107-3 § 264.90(a)(2)).
- ccc. Regulatory Milestone or "milestone" means the date for which a particular event is established in accordance with this Agreement. Regulatory milestones also include dates for activities regulated under this Agreement which follow the completion of target activities related to the management of special nuclear material at RFETS as identified in Appendix 6 of this Agreement (e.g., a milestone associated with decommissioning which can only be accomplished after certain special nuclear material management activities are completed). Failure to meet the requirements of a regulatory milestone shall trigger liability for stipulated penalties.
- ddd. Remedial Activities means activities regulated under one or more of the following statutory authorities: RCRA or CHWA closure and post-closure requirements for hazardous waste management units specified in this Agreement; RCRA or CHWA corrective action requirements; or CERCLA sections 104 or 106.
- eee. Remedial Investigation (RI) means the CERCLA term for an investigation to collect data necessary to adequately characterize the Site, assess the risks to human health and the environment, and to support the development and evaluation of remedial alternatives.
- fff. Remediation waste means all:
- (1) solid, hazardous, and mixed wastes;
 - (2) all media and debris that contain hazardous substances, listed hazardous or mixed wastes or that exhibit a hazardous characteristic; and
 - (3) all hazardous substances
- generated from activities regulated under this Agreement as RCRA corrective actions or CERCLA response actions, including decommissioning. Remediation waste does not include wastes generated from other activities. Nothing in this definition confers RCRA or CHWA

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authority over source, special nuclear, or byproduct material as those terms are defined in the Atomic Energy Act.

ggg. Requirements of this Agreement means provisions of this Agreement that specify:

- (1) actions DOE must perform to accomplish the activities regulated under this Agreement;
- (2) dates by which it must perform such actions;
- (3) standards which DOE must achieve through such actions; or
- (4) the manner in which such actions must be reviewed, approved, performed and overseen to comply with this Agreement and applicable environmental laws.

"Requirements of this Agreement" also includes all federal and state applicable or relevant and appropriate requirements (ARARs) incorporated in any ROD or other decision document.

hhh. Response Action means a "response action" under CERCLA or a corrective action or closure or post-closure activity under RCRA or CHWA.

iii. Retrievable Monitored Storage facility means a hazardous waste management unit that is utilized for the long-term storage of hazardous and/or mixed waste which is monitored and which is designed to allow retrieval of waste for treatment and/or disposal.

jjj. Rocky Flats Environmental Technology Site ("RFETS") means the property owned by the United States Government, formerly known as the Rocky Flats Plant or Rocky Flats Site, and now known as the Rocky Flats Environmental Technology Site, including the Buffer Zone, as identified in the map in Attachment 2. RFETS does not include contaminated areas beyond the facility property boundary. When the term "site" is used with a lower case "s", it means RFETS.

kkk. Scoping or Scoping Phase means that period of time, from initial conceptual development of proposed work to DOE's formal request for approval to perform work on an activity, during which DOE consults with the regulators regarding the goals, methods, breadth and desired outcome for such activity.

lll. the Site (when used with upper case "S", except in the phrase Rocky Flats Environmental Technology Site) means all contaminated areas of the Rocky Flats Environmental Technology Site and all contiguous or nearby areas that are contaminated by hazardous substances, pollutants, or contaminants (as those terms are defined in section 101 of CERCLA) and/or hazardous wastes or hazardous constituents (as those terms are defined in section 1004 of RCRA or 6 CCR 1007-3, Part 260) from sources at RFETS.

mmm. Solid Waste Management Unit (SWMU) means any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released (Proposed definition 55 FR 30808, July 27, 1990).

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- e. in accordance with Part 10, Changes to Work, require field modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures, or design utilized in carrying out this Agreement, which are necessary to the completion of the project; and
- f. set regulatory milestones in accordance with this Agreement.

61. In that portion of the Site in which each is the LRA, EPA and CDPHE have the authority to direct DOE to halt, conduct, or perform any tasks required by this Agreement when the LRA Project Coordinator determines that conditions may present an immediate risk to public health or welfare or the environment. If the LRA issues such verbal request, it shall follow up such request in writing within seven days. DOE may commence an emergency removal action if DOE determines, in accordance with the National Contingency Plan, that an emergency removal action must be commenced immediately to eliminate or abate a release or substantial threat of release of a hazardous substance that poses an immediate and substantial endangerment to the public health and welfare or the environment. DOE shall, as soon as practicable but not less than 24 hours after the determination is made to commence the emergency removal action, notify EPA and CDPHE of this determination. Once the immediate threat has been averted or mitigated, DOE may propose such further actions as necessary, in accordance with the provisions of Parts 9 or 10, as appropriate.

PART 8 REGULATORY APPROACH

62. The following activities are regulated under this Agreement:

- a. remedial activities for all IHSSs identified in Attachment 3;
- b. decommissioning in accordance with this Agreement and the MOU between the Parties and the DNFSB found in Appendix 1;
- c. compliance with 42 U.S.C. § 3969c(b)(5) requirements for mixed wastes generated by activities regulated under this Agreement that do not meet the treatment standards promulgated pursuant to 42 U.S.C. § 6924(m) and that are not proposed to be treated by treatment capacity developed pursuant to Compliance Order No. 95-10-03-01;
- d. timely completion of the milestones specified in Attachment 8; ~~and~~
- e. closure of underground storage tanks in accordance with Attachment 13; and
- f. RCRA and CHWA closure and post-closure requirements for regulated units.

63. While this Agreement regulates only those activities identified above, the Parties recognize that many activities occurring on the site are related, and that efficient use of tax dollars demands that management and regulation of all site activities be integrated. The Parties will ensure integrated management and regulation of activities both within and outside the scope of this Agreement, in part through the annual budget planning process described in Part 11. Decisions made in the course of the annual budget planning process, particularly those related to temporal prioritization of activities, may result in proposed changes to activities required by other enforceable permits, orders, or agreements that are not subject to regulation under this Agreement. CDPHE agrees to coordinate its decisions regarding these other permits, orders, etc., with decisions made in the budget planning process in Part 11.

64. In making regulatory decisions regarding activities regulated by this Agreement, CDPHE and EPA agree that each shall apply the statutory and regulatory requirements and respective agency guidance or policy positions in effect at the time a decision is made.

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for proposed actions not regulated under this Agreement but which may affect activities conducted under this Agreement.

Subpart B. Document and Work Review and Approval Processes

96. All remedial work at the Site, including all non-time-critical removal actions, shall be conducted either as an accelerated action for one or more IHSSs, a closure or post-closure plan, or pursuant to a CAD/ROD for an OU. All remedial work shall be implemented considering the factors described in paragraph 0445 (Budget and Work Planning). DOE shall not commence any activity subject to approval under this Part unless it has been approved by CDPHE or EPA or, in the case of a disapproval, until the dispute resolution process has been exhausted. Notwithstanding the above, DOE may initiate a time-critical removal action if it determines, in accordance with the NCP, that an immediate response is needed to eliminate or abate a release or substantial threat of release of a hazardous substance posing an immediate and substantial endangerment to public health and welfare or the environment. DOE shall notify EPA and CDPHE within 24 hours of this determination. Once the immediate threat has been averted or mitigated, DOE shall propose any further actions that may be necessary in accordance with the provisions of this Part or Part 10, as appropriate. DOE recognizes that if it proceeds with work that has been disapproved, it may be subjected to enforcement action by CDPHE or EPA. There are three types of accelerated actions:

- a. Interim Measure/Interim Remedial Action (IM/IRA)
- b. Proposed Action Memorandum (PAM)
- c. RFCA Standard Operating Protocol (RSOP)

IM/IRAs apply to accelerated actions that are estimated to take more than six months from the time of commencement of physical remedial work to complete. PAMs apply to accelerated actions that are estimated to take less than six months from time of commencement of physical remedial work to complete. RSOPs apply to accelerated actions that are routine and substantially similar in nature, for which standardized procedures can be developed. RSOPs may incorporate "Alternative Operating Scenarios" as provided in the Air Quality Control Commission's regulations to implement CAPPCA requirements in lieu of individual construction permits from the Air Pollution Control Division. Closure Plans and Post-closure Plans apply to regulated hazardous waste management units. CAD/RODs apply to the final corrective/remedial decision made for an OU following implementation of all accelerated actions.

97. Closure and post-closure of permitted or interim status units may be performed either pursuant to a separate closure or post-closure plan or an accelerated action decision document. Closure Plans shall follow the relevant review process described in 6 CCR 1007-3, Parts 264 or 265 and/or Part 100 for the hazardous waste unit(s) in question. When a decision document incorporates a modification to an approved closure plan for a permitted unit, CDPHE shall modify the permit to incorporate the approved closure plan modification. The requirements for closure of interim status units that are regulated under this Agreement are set forth in Attachment 10. ~~Compliance with applicable CHWA closure requirements w~~When the closure or post-closure is performed as an accelerated action, compliance with CHWA closure and post-closure requirements including any requirements for post-closure permits, will be addressed in required through the PAM, RSOP or IM/IRA. CDPHE shall be considered the LRA for closure and post-closure activities.

98. IM/IRAs, CAD/RODs, and PAMs approved prior to the effective date of this Agreement shall be implemented as requirements of this Agreement. Accelerated actions, including those that are in

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1 lieu of closure or post-closure plans, do not require separate CHWA permit modifications or permits.
2 Instead, CHWA requirements that are applicable to the proposed action, including any requirements
3 for post-closure permits or other enforceable mechanisms, will be ~~addressed-incorporated~~ in the
4 PAM, IM/IRA, or RSOP.
5

6 99. If an accelerated action in the Industrial Area would trigger the requirement for a permit described in
7 paragraph ~~0403.a~~ or ~~0403.b~~, CDPHE commits that the procedural requirements for obtaining such
8 permit shall not result in any additional time for approval of that activity than would otherwise be
9 required under this Agreement.
10

11 100. To further streamline the work approval process, CDPHE agrees that DOE may apply for a single
12 construction permit that could cover multiple activities which would otherwise require air
13 construction permits. Such a permit application could incorporate "Alternative Operating Scenarios"
14 in accord with state air quality regulations. Such permit application may, but need not, be made in
15 conjunction with a specific proposed accelerated action. In such an application, DOE may develop a
16 "worst case scenario" that projects emissions levels, numbers and types of pollutants, volumes of soil
17 to be excavated that would constitute an upper bound defining the largest excavation project
18 anticipated, and equipment needs. Once approved, DOE would not need additional air quality
19 construction permits for subsequent activities that fall within the limits established in the alternative
20 operating scenario.
21

22 101. The Parties recognize that, in the Industrial Area OU, activities regulated under this Agreement will
23 require the coordination of activities between a number of State environmental agencies or
24 departments, whether or not separate permits are required. CDPHE agrees, absent circumstances
25 beyond its control, to provide adequate coordination of, and timely response from, its various
26 agencies and other State departments. CDPHE also agrees to provide DOE with guidance so that
27 DOE can submit a single draft document that meets both the information requirements of applicable
28 permits and the information needed for CDPHE to make a determination under CHWA. All State-
29 imposed conditions on the proposed action shall be contained in the PAM, IM/IRA, consolidated
30 review process decision, or CAD/ROD.
31

32 102. CDPHE shall determine in the scoping phase of any proposed action in the Industrial Area whether a
33 State permit will likely be required, consistent with the following two paragraphs. If, during the
34 scoping phase of a proposed action, DOE provides CDPHE with adequate information to determine
35 that a permit is required, but CDPHE fails to identify the need for a State permit until after the
36 scoping phase of a proposed action, the appropriate review process described in one of the following
37 two paragraphs shall still be followed. However, DOE shall be entitled to an extension of any
38 affected regulatory milestone, and CDPHE shall, absent circumstances beyond its control, mitigate
39 any delay from the failure to identify the need for the permit. If CDPHE fails to identify the need for
40 a permit during the scoping phase due to DOE's failure to provide the necessary information, the
41 appropriate review process described in one of the following two paragraphs shall still be followed.
42 CDPHE shall still use its best efforts to mitigate any delay from the failure to identify the need for a
43 permit, but DOE shall not be entitled to an automatic extension of any affected regulatory milestone.
44

45 103. If, during the scoping phase for any accelerated action proposed to be implemented in the Industrial
46 Area, CDPHE determines that the proposed action will likely require either:

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and comment. Technical memoranda and other non-decision documents that modify previously approved work shall be approved through the appropriate modification process in Part 10.

- a. Baseline Risk Assessment Technical Memoranda
- b. CMS/FS Technical Memoranda
- c. RFI/RI Work Description Document Technical Memoranda
- d. Geochemical Characterization of Background Surface Soils
- e. Other support documents for any activity covered by this Agreement as deemed appropriate by the Parties
- f. Progress reports described in Part 21
- g. Reconnaissance Level Characterization Reports

121. The following draft documents shall be subject to public comment:

- a. Draft Permit Modifications/Proposed Plans
- b. PAMs
- c. IM/IRAs
- d. Closure and Post-closure Plans
- e. RSOPs

The length of the public comment period shall be defined during scoping. Other documents listed in paragraphs 0418 and 0419 that are approved through the PAM or IM/IRA process, including, for example, RSOPs, Decommissioning Operations Plans, and the Decommissioning Program Plan, shall go to public comment through the PAM or IM/IRA process.

122. DOE shall update quarterly the list of all approved documents, other approvals, and final resolutions of dispute contained in Attachment 12, and shall provide this list to the other Parties and place a copy in each of the Repositories. All draft and final documents subject to public comment, as well as their associated responses to comments, shall also be placed in the Repositories.

PART 10 CHANGES TO WORK

123. The Parties intend that, using the consultative process, they can substantially streamline the processes for modifying or revising approved work or decision documents that may be necessary arising from planned or unforeseen circumstances during the course of implementation. This Part establishes change control procedures for RSOPs, PAMs, IM/IRAs and CAD/RODs. The goal of the change control process is to keep previously approved elements of work at RFETS moving towards a timely, cost-effective completion while satisfying the underlying objective for which original approval was granted. For work being done under other types of decision documents, the Project Coordinators shall establish appropriate time frames and procedures consistent with the nature of the processes described below.

124. DOE shall evaluate baseline and regulatory milestone impacts associated with approved changes. If DOE finds the change will affect regulatory milestones, DOE shall identify proposed modifications to the regulatory milestones pursuant to Part 12 (Changes to Regulatory Milestones) and notify the other Parties of modifications to the baseline as provided below. If DOE finds that the change to